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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

SUSAN BITTER SMITH - Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

Arizona Corporation Commission

DOCKETED

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IN THE MATTER OF THE APPLICATION OF GC
PIVOTAL, LLC DBA GLOBAL CAPACITY FOR
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD AND
FACILITIES-BASED LOCAL EXCHANGE,
RESOLD AND FACILITIES-BASED
INTEREXCHANGE, AND FACILITIES-BASED
PRIVATE LINE TELECOMMUNICATIONS
SERVICES IN ARIZONA.

DOCKET NO. T-20787A-14-0367

DECISION NO. 74903

OPINION AND ORDER

DATE OF HEARING: December 30, 2014
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Sasha Paternoster
APPEARANCES: Mr. Michael W. Patten, ROSHKA DeWULF &
PATTEN, P.L.C., on behalf of Applicant; and
Mr. Matthew Laudone, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On October 9, 2014, GC Pivotal, LLC, dba Global Capacity ("GC Pivotal") filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("CC&N"), to provide resold and facilities-based local exchange, resold and facilities-based interexchange, and facilities-based private line telecommunications services on a statewide basis in Arizona. GC Pivotal's application also requested a determination that its proposed services are competitive in Arizona.

On October 15, 2014, GC Pivotal docketed a signed certification to the application.

On October 28, 2014, GC Pivotal filed Responses to the Commission's Utilities Division's ("Staff") First Set of Data Requests.

1 On November 5, 2014, GC Pivotal filed Responses to Staff's Second Set of Data Requests.

2 On December 1, 2014, Staff filed a Staff Report recommending approval of GC Pivotal's
3 application, subject to certain conditions.

4 On December 3, 2014, by Procedural Order, the hearing in this matter was set for December
5 30, 2014, and other procedural deadlines were established.

6 On December 4, 2014, GC Pivotal filed a Status of Publication Requirement, indicating the
7 earliest the Notice could be published was December 9, 2014, rather than the date of December 8,
8 2014 as set forth in the Procedural Order.

9 On December 16, 2014, GC Pivotal filed an Affidavit of Publication indicating that notice of
10 the application and hearing date had been published in *The Arizona Republic*, a newspaper of general
11 circulation in Arizona.

12 On December 30, 2014, a full public hearing was held as scheduled before a duly authorized
13 Administrative Law Judge of the Commission. GC Pivotal and Staff appeared through counsel and
14 presented testimony and evidence. No members of the public appeared to give comments on the
15 application.

16 On December 30, 2014, GC Pivotal docketed a late-filed exhibit updating the status of the
17 Company's pending CC&N applications in other jurisdictions.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. GC Pivotal is a foreign limited liability corporation organized under the laws of
23 Delaware, with its headquarters located in Chicago.¹

24 2. GC Pivotal is wholly owned by Pivotal Global Capacity, LLC, an Arizona limited
25 liability company.² Pivotal Global Capacity, LLC is wholly owned by FFN Investments, LLC, which
26 is also an Arizona limited liability company.³

27 ¹ Exhibit S-1 at 1.

28 ² Id.

³ Id.

3. On October 9, 2014, GC Pivotal filed an application with the Commission to provide resold and facilities-based local exchange, resold and facilities-based interexchange, and facilities-based private line telecommunications services on a statewide basis in Arizona. The application also requested a determination that its proposed services are competitive in Arizona.

4. GC Pivotal currently holds a CC&N to provide resold private line service in Arizona pursuant to Decision No. 73645 (February 6, 2013). The Company seeks to expand its CC&N authority to include resold and facilities-based local exchange, resold and facilities-based interexchange, and facilities-based private line telecommunications services to mirror the authority currently held by Megapath Corporation ("Megapath").⁴

5. GC Pivotal's application did not include a proposed tariff for the services it is requesting authority to provide, but the Company affirms that it will provide the same services and charge the same rates under the same terms and conditions as was provided by Megapath.⁵

6. Notice of GC Pivotal's application was given in accordance with the law.

7. Staff recommends approval of GC Pivotal's application for a CC&N to provide intrastate telecommunication services in Arizona, subject to the following conditions:

- a. GC Pivotal comply with all Commission Rules, Orders, and other requirements relevant to the provision of intrastate telecommunications services;
- b. GC Pivotal abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-13-0199;
- c. GC Pivotal be prohibited from barring access to alternative local exchange service providers who wish to serve areas where GC Pivotal is the only local provider of local exchange service facilities;
- d. GC Pivotal notify the Commission immediately upon changes to GC Pivotal's name, address or telephone number;
- e. GC Pivotal cooperate with Commission investigations including, but not limited to, customer complaints;
- f. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. GC Pivotal indicated that at the end of the first twelve months of operation the net

⁴ In a separate docket, GC Pivotal and Megapath jointly filed for approval to transfer the customers and assets from Megapath to GC Pivotal, which will include the interconnection agreement with the Incumbent Local Exchange Carrier. The Commission has not issued a Decision, however, Staff has recommended approval of the transfer application contingent upon the granting of the CC&N in this docket.

⁵ Tr. at 13.

book value of all Arizona assets that could be used in the provision of telecommunications service to Arizona customers will be \$5 to 7 million. The rate to be ultimately charged by GC Pivotal will be heavily influenced by the market. Therefore, while Staff considered the fair value rate based on information submitted by GC Pivotal, the fair value information provided was not given substantial weight in this analysis;

- g. GC Pivotal offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
- h. GC Pivotal offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated; and
- i. The Commission authorize GC Pivotal to discount its rates and service charges to the marginal cost of providing the services.

8. Staff further recommends that GC Pivotal's CC&N be considered null and void after due process if GC Pivotal fails to comply with the following conditions:

- a. If GC Pivotal does not provide local exchange service to end users within (3) three years from the date of the Order in this docket, that GC Pivotal be required to notify the Commission of this fact and to request cancellation of its CC&N through a filing made in this docket;
- b. GC Pivotal shall notify the Commission through a compliance filing within (30) thirty days of the commencement of service to its first end-user customer;
- c. GC Pivotal file a tariff update within (30) thirty days from the date of the Order in this docket indicating the toll free number for customer complaints; and
- d. GC Pivotal shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R-14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R-14-2-1204(B).

9. Staff also recommends GC Pivotal's proposed services be classified as competitive given the availability of alternatives, the inability of the Company to adversely affect the local exchange or long distance service markets, and GC Pivotal's lack of market power.

Technical Capability

10. GC Pivotal intends to provide its proposed services to small business customers and some larger competitive local exchange carriers ("CLECs").⁶

⁶ Tr. at 11-12.

11. GC Pivotal has authority to provide resold private line service in Arizona.⁷ The Company also has authority to provide private line, access, resold, or facilities-based local exchange and/or interexchange services in fifty (50) jurisdictions including Arizona.⁸

12. GC Pivotal's team of officers and managers have a combined total of 53 years' experience in the telecommunications industry.⁹ According to the witness, the Company intends to provide private line and dedicated internet services to end users.¹⁰

13. The Company will have four employees in Arizona to provide field technician services and will acquire Megapath's network upon consummation of the transaction to transfer customers and assets.¹¹

Financial Capabilities

14. GC Pivotal provided audited financial statements for the 12 months ending December 31, 2012, listing total assets of \$31,845,970; total equity of \$23,977,999; and a net income of negative \$3,213,221.¹² For the 12 months ending December 31, 2013, GC Pivotal listed total assets of \$30,777,249; total equity of \$20,233,353; and net income of negative \$3,713,213.¹³

Rates and Charges

15. Staff believes that GC Pivotal will have to compete with other incumbent local exchange carriers ("ILECs"), and various CLECs, and interexchange carriers ("IXCs") in Arizona in order to gain new customers.¹⁴ Staff states it does not believe GC Pivotal will be able to exert market power given its status as a new entrant in the market.¹⁵

⁷ Exhibit S-1 at 1.

⁸ Exhibit S-1, Attachment A and Exhibit A-4. The other jurisdictions include the District of Columbia and each of the United States, except for Alaska.

⁹ Exhibit S-1 at 2.

¹⁰ Tr. at 14.

¹¹ Exhibit S-1 at 2.

¹² Id.

¹³ Id.

¹⁴ Id. at 3.

¹⁵ Id.

1 16. Pursuant to A.A.C. R14-2-1109, the rates charged for each service GC Pivotal
2 proposes to provide may not be less than the Company's total service long-run incremental cost
3 of providing that service.

4 17. GC Pivotal projects that for the first twelve months of operation in Arizona, it
5 will have a net book value of \$5 to 7 million.¹⁶

6 18. Staff states that in general, rates for competitive services are not set according to
7 rate of return regulation. Staff believes that GC Pivotal's rates will be heavily influenced by
8 the market.¹⁷ Therefore, Staff states that while it considered the fair value rate base ("FVRB")
9 information submitted by GC Pivotal, that information was not afforded substantial weight in
10 Staff's analysis.¹⁸

11 **Local Exchange Carrier Specific Issues**

12 19. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, GC Pivotal must
13 make number portability available to facilitate the ability of customers to switch between
14 authorized local carriers within a given wire center without changing their telephone number
15 and without impairment to quality, functionality, reliability, or convenience of use.

16 20. Pursuant to A.A.C. R14-2-1204(A), all telecommunication service providers that
17 interconnect to the public switched telephone network shall provide funding for the AUSF. GC
18 Pivotal shall make payments to the AUSF described under A.A.C. R14-2-1204(B).

19 21. In Commission Decision No. 74208 (December 3, 2013), the Commission
20 approved quality of service standards for Qwest to insure customers received a satisfactory
21 level of service. In this matter, Staff believes GC Pivotal should be ordered to abide by those
22 service standards.

23 22. In areas where the Company is the only local exchange service provider, Staff
24 recommends that GC Pivotal be prohibited from barring access to alternative local exchange
25 service providers who wish to serve the area.

27 ¹⁶ Id.

28 ¹⁷ Id.

¹⁸ Id.

23. If the Company begins to provide voice local exchange service, GC Pivotal will provide all customers with 911 and E911 service where available, or will coordinate with ILECs and emergency service providers to facilitate the service.

24. Pursuant to prior Commission Decisions, GC Pivotal may offer customer local area signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or unblock each individual call at no additional cost.

25. GC Pivotal must offer Last Call Return service, which will not allow the return of calls to the telephone numbers that have the privacy indicator activated.

Complaint Information

26. GC Pivotal's application states that the Nevada Public Utilities Commission's Staff issued a petition for a show cause order against Global Capacity.¹⁹ The Company reported the order was for an incomplete 2012 annual report but Staff discovered the Company was ordered to pay a \$50 fine for a late filed error correction, which GC Pivotal timely paid.²⁰

27. The Company's application also states the Public Service Commission of West Virginia filed a Joint Staff Memorandum indicating GC Pivotal's certificate of authority should be revoked for failing to commence operations within one year as required by the Commission's order.²¹ In its research, Staff discovered that the Company had commenced operations approximately six (6) months later than ordered, but that the matter had since been closed without revocation of authority.²²

28. GC Pivotal states that none of the Company's officers, directors, partners, or managers have been involved in any civil or criminal investigations, or had judgments entered in any civil matter, or by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.²³

¹⁹ Exhibit A-1 at A-11.

²⁰ Exhibit S-1 at 5.

²¹ Exhibit A-2 at Attachment-STF 1.11.

²² Exhibit S-1 at 5.

²³ Exhibit A-1 at A-12.

29. Staff contacted the Public Utility Commission in eight states²⁴ in which GC Pivotal reported to have authority to provide telecommunications services and found that the Company is authorized to provide telecommunications services in each state and no complaints have been filed.²⁵

30. Staff states that the Commission's Consumer Services Section reported that no complaints, inquiries, or opinions have been filed against GC Pivotal from January 1, 2011 to October 20, 2014. According to Staff, GC Pivotal is in good standing with the Commission's Corporation Division and is in compliance with the Utilities Division's Compliance Section.²⁶

31. As of the filing of the Staff Report, GC Pivotal had no complaints filed with the Federal Communications Commission ("FCC").

Competitive Review

32. GC Pivotal's application requests that its proposed telecommunications services in Arizona be classified as competitive. Staff believes GC Pivotal's proposed services should be classified as competitive because GC Pivotal will have to compete with CLECs and ILECs to gain customers; there are alternative providers to GC Pivotal's proposed services; ILECs hold a virtual monopoly in local exchange and IXC markets; and that GC Pivotal will not have the ability to adversely affect the local exchange or IXC markets in Arizona.²⁷

33. Based on the above factors, Staff concludes that GC Pivotal's proposed services should be classified as competitive.

34. Staff's recommendations are reasonable and should be adopted.

CONCLUSIONS OF LAW

1. GC Pivotal is a public service corporation within the meaning of Article XV of the Arizona Constitution, and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over GC Pivotal and the subject matter of the application.

²⁴ The states Staff contacted are Arkansas, Hawaii, Nevada, Oklahoma, Texas, Vermont, and Virginia.

²⁵ Exhibit S-1 at 5.

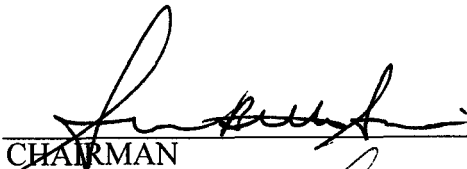
²⁶ Id.

²⁷ Id. at 5-9.

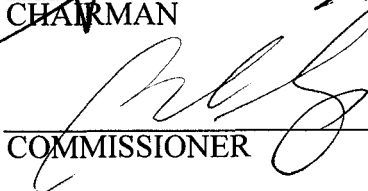
IT IS FURTHER ORDERED that GC Pivotal, LLC, dba Global Capacity shall docket conforming tariffs for each service within its CC&N within 365 days of the effective date of this Decision or 30 days prior to serving its first customer, whichever comes first. The tariffs submitted shall coincide with the application in this matter.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

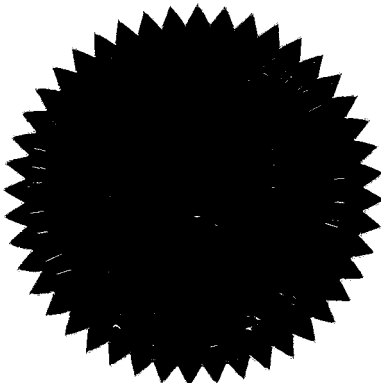

CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of January 2015.


JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
SP:ru

1 SERVICE LIST FOR: GC PIVOTAL, LLC, DBA GLOBAL CAPACITY

2 DOCKET NO.: T-20787A-14-0367

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